No. 18-15309

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

YUROK TRIBE,

Plaintiff-Appellant,

v.

RESIGHINI RANCHERIA and GARY MITCH DOWD,

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of California
No. 16-cv-02471-RMI; Hon. Robert M. Illman

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

Page No.

TABLE OF AUTHORITIES

Page No.

Cases

Page No.

Cases

Statutes

Rules

Page No.

Other Authorities

INTRODUCTION

The Yurok Tribe responds to the principal arguments of Appellees Resighini Rancheria and Gary Dowd in their Answering Brief. Because the Rancheria has asserted no legally cognizable claims or interests, and the District Court failed to examine those claimed interests to test their viability, the District Court abused its discretion in dismissing the Yurok Tribe's action against Gary Dowd.

ARGUMENT

I. The Nature of Resighini Rancheria's Interest is Irrelevant Because, by the Terms of the Hoopa-Yurok Settlement Act, Dowd Voluntarily Gave Up Any Interest Whatsoever That He May Have Had in the Yurok Fishery.

The central question on this appeal is whether the Yurok Tribe's claims against Defendant-Appellee Gary Dowd as an individual can be adjudicated without the participation of the Resighini Rancheria. It is undisputed that Dowd was fishing, and claims a right to fish in the future, within the boundaries of the Yurok Reservation, outside the Resighini Reservation. It is also undisputed that he accepted $15,000 from the United States under the Hoopa-Yurok Settlement Act as a buy-out of whatever interest he may have claimed to the resources, property and rights in the Yurok Reservation. ER 118-119. By the plain terms of the Act, Dowd's acceptance of the $15,000 buy-out payment completely and permanently extinguished "any interest or rights whatsoever in the tribal, communal, or unallotted land, property, resources, or rights within, or appertaining to, . . . the Yurok Reservation or the

Yurok Tribe." Hoopa-Yurok Settlement Act § 6(d)(3) ("HYSA"). Dkt. Entry 10 at 55. Whatever rights Dowd claims to have possessed, whether individual or arising from membership in the Rancheria, or any other "rights whatsoever" Dowd could have claimed to resources of the Yurok Reservation, including the fishery, were sold in return for payment of $15,000.

Two salient features of the HYSA's language bear emphasis. First, there is no ambiguity about the legal effect and practical consequences of accepting this payment: Dowd knowingly, voluntarily and unequivocally relinquished whatever rights he may have asserted in the Yurok Reservation and resources as of 1988. Second, the legal consequences from accepting the payment flow regardless of the nature, scope or source of the rights asserted. Congress deliberately did not condition the relinquishment of rights on a showing of a particularized legal interest or right. Rather, *any* interests or rights *whatsoever* in the Yurok Reservation are given up if the buy-out is accepted, as Dowd plainly did. For purposes of this appeal, it does not matter whether Dowd asserts a tribal fishing right, an individual fishing right, an aboriginal fishing right, a Yurok descendancy fishing right or some combination of these (all of which have at various times been asserted by Dowd in this litigation). Precisely because the nature of federal tribal fishing rights depends on the unique

legal history and circumstances of each Indian tribe,[1] Congress in the HYSA chose language that blankets all such characterizations: any rights whatsoever are given up if one accepts the buy-out payment. Resighini's claimed interest is not implicated in any way in this action to enforce Dowd's HYSA contractual waiver.

Dowd has no answer to this argument, and in fact, does not respond to it at all. He makes one conclusory statement that "neither the Hoopa-Yurok Settlement Act . . . nor a payment made to Gary M. Dowd in connection with timber proceeds litigation, extinguished the rights of Yurok people—some of whom are now enrolled members of the Resighini Rancheria—to fish at their usual and accustomed places within their ancestral homeland." Dowd Answering Brief at 6. Not surprisingly, Dowd cites no language from the HYSA to support this reading of the consequences of accepting the buy-out. There is no such language and Dowd's strained interpretation of the HYSA is erroneous.[2]

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[1] The legal instruments recognizing Indian fishing rights should be interpreted according to the Indians' understanding in light of their traditional practices, habits and "modes of life." *Minnesota v. Mille Lacs Band of Chippewa Indians,* 526 U.S. 172, 194, n. 5 (1999); *Mitchel v. United States,* 34 U.S. 711, 746 (1835).

[2] Dowd's reliance on the national forest lands section of the HYSA, 25 U.S.C. § 1300-1(c) is misplaced. Dowd Answering Brief at 16. That section did not preserve the "off-reservation, legally protected rights" of the Resighini Rancheria to fish in the Klamath River on the Yurok Reservation. Rather, that section conveyed title to national forest system lands within the Yurok Reservation, "[s]ubject to all valid existing rights." By its plain terms, that section had nothing to do with fishing rights.

The unambiguous legal effect of the HYSA buy-out provision makes this Court's path to reversal straightforward. The inescapable conclusion that Dowd gave up his rights through the HYSA buyout means that this Court may reverse and order the District Court to adjudicate the Yurok Tribe's claims in the absence of the Resighini Rancheria. This Court's approach to Rule 19 is properly informed by practical considerations and the specific facts illuminating the interests at stake. *Cachil Dehe Band of Wintun Indians of the Colusa Indian Cmty. v. California*, 547 F.3d 962, 970 (9th Cir. 2008). The Resighini Rancheria has demonstrated no legally cognizable interest in participating in this lawsuit between only the Yurok Tribe and a Rancheria tribal member (Dowd) who accepted money in exchange for a waiver of all his interest or rights "whatsoever" in the Yurok Reservation, after having been fully informed of the legal and practical consequences of his decision, yet claims he still retains these rights.

When the statutory language is plain and unambiguous, the statute must be applied according to its own terms. *Dodd v. United States*, 545 U.S. 353, 359 (2005). Because the HYSA says that any interest or right whatsoever is extinguished upon acceptance of the cash payment, this Court should follow those consequences where

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But even if it could be construed in that fashion, it does not help Dowd since he was not fishing on national forest lands within the Yurok Reservation.

they lead: the dispute between Dowd as an individual and the Yurok Tribe may be resolved without affecting any alleged interest of the Resighini Rancheria.

II. The Constitution of the Resighini Rancheria Negates Any Assertion of an Interest in Maintaining Its Sovereignty Outside Its Reservation.

Resighini Rancheria cannot plausibly argue that its sovereign interests will be affected by an adjudication of the Yurok Tribe's claims against Dowd as an individual. Answering Brief at 39. The Rancheria's Constitution unambiguously defines the boundaries of the Rancheria's sovereign interests. That Constitution limits the Rancheria's sovereign interest to "all territory included within the present rancheria and to such lands as may be legally added thereto." SER 8. Yet, throughout these proceedings, the Rancheria asserts a "sovereign interest" in the fishery of the Klamath River within the Yurok Reservation, which is unquestionably outside the boundaries of the Rancheria. By operation of the Rancheria's own law, such a claim is beyond the Rancheria's authority.

When a tribe itself has defined the limits of its authority, those limits are enforceable in the courts of the United States. *Bugenig v. Hoopa Valley Tribe*, 266 F.3d 1201 (9th Cir. 2001). The Hoopa Valley Tribe's Constitution limits the jurisdictional reach of the Tribe to "all lands within the confines of the Hoopa Valley Reservation boundaries as established by Executive Order of June 23, 1876, and to such other lands as may hereafter be acquired by or for the Hoopa Valley Indians." *Id.* at 1214. Applying the plain meaning of this text, this Court determined that under

this constitution, the Tribe's jurisdiction extended only to "all lands within the border[s] of [the Tribe's original Reservation]" and over "such other lands…that could be acquired later, but do not fall within the category of "all lands" within the original [Reservation]." *Id.* A similar plain reading of the Resighini Constitution leads to the same conclusion: The Rancheria's jurisdiction extends to all lands within the boundaries of the Rancheria's reservation at the time the Constitution was adopted as well as any lands later acquired by the Tribe. Nothing in the Rancheria's Constitution extends its sovereign authority over what it calls ancestral lands that lay outside of the Rancheria's territorial limits. It is undisputed that Resighini has not acquired any lands within the Yurok Reservation, and that Dowd was fishing outside the boundaries of the Rancheria's Reservation as delimited by its Constitution. Because Dowd's action occurred outside of the Rancheria's jurisdictional boundary as defined by its own Constitution, the Rancheria's sovereign interest is not implicated by the Yurok Tribe's action against Dowd.

III. Resighini's Assertion That It Has a Federal Reserved Fishing Right on the Yurok Reservation That is Exempt from Any Regulation is Frivolous.

Having belatedly raised its sovereign immunity from suit in the District Court, the Rancheria then asserted that it had a "legally cognizable" interest in the dispute between the Yurok Tribe and Gary Dowd, who is sued solely in his individual capacity. *Disabled Rights Action Comm v. Las Vegas Events, Inc.*, 375 F.3d 861, 880

(9th Cir. 2004) (the interest claimed must be "legally cognizable"). As stated by the Rancheria most recently:

> Resighini asserts that it maintains a federally-reserved fishing right within the Klamath River Reservation, which includes locations within the present-day Yurok Reservation . . . .

Answering Brief at 36. The Rancheria argues that this interest will be adversely affected by the court's resolution of the dispute between the Yurok Tribe and Gary Dowd. Answering Brief at 37. Despite having had many opportunities, the Rancheria has provided no legal support for its claimed interest. A bare assertion of an interest untethered to legal authority is not sufficient to confer required party status on an absent party under Rule 19. *See, e.g., Cachil Dehe Band of Wintun Indians of the Colusa Indian Cmty. v. California,* 547 F.3d at 970 (the interest claimed under Rule 19 must be a substantial, legally protected one); *Republic of the Philippines v. Pimentel*, 553 U.S. 851, 867 (2008) (claimed interests must not be "frivolous"). The District Court abused its discretion by failing to examine the legal bases for the Rancheria's asserted interest. That examination would have shown that the assertion is both unsupported and insupportable—in another word, frivolous.

First, the assertion that the Rancheria's fishing right is a right to take the fish of the Yurok Reservation is legally insupportable and contrary to established principles of Indian law. Congress provided the Resighini Rancheria the option to merge with and become part of the Yurok Tribe and thereby enjoy the resources of the Yurok

Reservation. HYSA § 11(b). The Rancheria declined. ER 075-76. Considering its refusal to follow the path Congress laid out for sharing in the fishery and other resources of the Yurok Reservation, the Rancheria's assertion today that it has legally cognizable interests in that Reservation is fanciful. It cites no authority for the extraordinary proposition that its members possess a right to leave the Rancheria, enter the Reservation of a separate tribe, and remove from that separate Reservation the resources of that tribe. Here, the Rancheria claims an unregulated right to take fish wholly at its own discretion from the Yurok Reservation and asks this Court to forever bar the Yurok Tribe from challenging that right in court. The Rancheria could just as easily assert a right in its discretion to cut trees and remove timber, hunt elk, mine gravel, pump groundwater, send its children to Yurok schools, and otherwise take full advantage of all other resources held by the Yurok Tribe and perhaps other tribes.

As the Yurok Tribe has pointed out, when a tribe's own constitution, like that of the Rancheria, limits its sovereign authority to its territorial boundaries, courts should respect that sovereign choice. *Worcester v. Georgia*, 31 U.S. 515, 557 (1832); *Plains Commerce Bank v. Long Family Land and Cattle Co.*, 554 U.S. 316, 327 (2008). The Rancheria's authority inarguably does not extend into the exclusive authority of the Yurok Tribe over its Reservation. The notion that the Rancheria has

a right to the resources of a separate sovereign Indian tribe is entirely without legal support.

Further, the Rancheria's claim that its right to the Yurok Tribe's resources somehow derives from its members' claimed descendancy from Yurok people is both bizarre and legally insupportable. Answering Brief at 15. It is bizarre because such a right would by definition be an individual right. Yet, the Rancheria repeatedly states that an Indian fishing right is a "tribal right and not an individual right." Answering Brief at 34-35 (". . . [A]s discussed herein *ad nauseum*, a tribal right is a tribal right and not an individual right."). The Rancheria states that its members have "Yurok ancestors" that "fished in the Klamath River." Answering Brief at 15. It states that Resighini members have a legal right to "fish at usual and accustomed fishing places located on the Klamath River where their Yurok ancestors had fished since time immemorial." Answering Brief at 16. Not surprisingly, the Rancheria cites no legal authority to support its claim because there is none.

The right of tribal members to fish outside of their reservation is unquestionably lawful when that right is reserved by treaty or executive order, or is based on an agreement or statute. *See* COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 18.04[1] at 1163, (Nell Jessup Newton ed. 2012) ("COHEN'S HANDBOOK"); *see, e.g.,* Treaty with the Crows (1868), art. 4, 15 Stat. 649 (guaranteeing "the right to hunt on the unoccupied land of the United States so long

as game may be found thereon, and as long as peace subsists among the whites and the Indians on the borders of the hunting districts"); *see also United States v. Confederated Tribes of the Colville Reservation*, 606 F.3d 698 (9th Cir. 2010) (despite a move to the Colville Reservation, Wenatchi tribal members retained fishing rights pursuant to an 1894 agreement); *Antoine v. Washington*, 420 U.S. 194, 196 (1975) (agreement between United States and Tribe). There is no similar treaty, agreement or statute that establishes a right of Resighini to fish or take other resources outside the boundaries of its Reservation.[3] Likewise, Resighini has not asserted a credible basis for an aboriginal right to fish on the Yurok Reservation. Resighini cites no support for the novel concept that mere descendancy of some individuals grants to a tribe the right to fish outside its own Reservation and within the Reservation of a separate, federally recognized Indian tribe.[4] To be sure, Resighini's Reservation was

[3] Resighini asserts a right to fish at "usual and accustomed" fishing locations on the Yurok Reservation. Answering Brief at 5-6. Those are terms of art found only in the treaties with Indian tribes in Washington and Oregon negotiated by Isaac Stevens in 1855. *See generally Washington v. Wash. State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658 (1979); COHEN'S HANDBOOK § 18.04[2][e] at 1169.

[4] It is not unusual in the United States for ethnically aligned people to have been assigned separate, independent, and sovereign nation status with separate reservations: Ute people may be members of either the Ute Mountain Ute Tribe, Ute Tribe of Utah, or the Southern Ute Tribe, each of which has a separate Reservation in Colorado, New Mexico and Utah. 83 Fed. Reg. 4235, 4239 (2018). And "the great Sioux nation, for example, was divided by federal law into geographically separated and independently recognized tribes in order to weaken the Sioux militarily. Other groups, such as the Oneida, the Cherokee, and the Choctaw, are recognized as

created for Indians who were then unaffiliated with any tribe, so it cannot be concluded without more that its members have Yurok ancestry. *Coast Indian Cmty v. United States,* 550 F.2d 639, 642-44 (Ct. Cl. 1977).

The Rancheria's claimed interest, that as a sovereign government it has a federally-reserved fishing right within the Yurok Reservation, is equally faulty. Answering Brief at 26-27, 30. The Rancheria relies on no authority whatsoever to buttress its assertion of a federally-reserved fishing right within the Yurok Reservation. In contrast, the Yurok Tribe's federally-reserved fishing right in the Klamath River within its Reservation is well-established. As this Court described:

> In partitioning the original reservation in 1988, Congress recognized the importance of the [Hoopa and Yurok] Tribes' rights to fish along the Klamath River. Although the 1988 Hoopa–Yurok Settlement Act did not explicitly set aside fishing rights, it did make clear that the partitioning would not dispossess the Tribes of their assets. The legislative history of the 1988 Act indicates that Congress was aware that each Tribes' interests in their salmon fisheries was one of its principal assets. For example, Congress explained that
>
> > The legislation will also establish and confirm the property interests of the Yurok Tribe in the Extension, including its interest in the fishery, enabling the Tribe to organize and assume governing authority in the Extension. S.R. 564, 100th Cong., 2d Sess., 2–9 (1988); H.R. 938, Pt. 1, 100th Cong., 2d Sess., 8–15.

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multiple separate nations, because some members moved to new territories as part of the federal removal process . . . ." COHEN'S HANDBOOK § 3.02[2] at 133. There is no legal authority that confers on Ute Mountain Tribal members a right based on ethnic identity or descendancy or any other factor to take the resources of its related Ute Nations.

Parravano v. Masten, 70 F.3d 539, 546 (9th Cir. 1995). In contrast, there is nothing in the history of the creation of the Rancheria, and the Rancheria itself cites to no authority, that confers upon the Indians of the Rancheria a right, reserved or otherwise, to fish outside their Reservation. *See Coast Indian Cmty*, 550 F.2d at 642-44 (discussing that the Resighini Rancheria was established as a land base for homeless Indians without regard to tribal affiliation).

In sum, the Rancheria claims to possess a reserved right to fish based on unsupported claims of ethnicity, and on unsupported allegations of a federal reservation of the right. Resighini Rancheria has no "legally protected" interests in the dispute between an individual who sold his right to fish on the Yurok Reservation and the Yurok Tribe. *Cachil Dehe Band*, 547 F.3d at 970. The Rancheria's claim to a reserved fishing right within the Yurok Reservation is frivolous. *Republic of the Philippines v. Pimentel*, 553 U.S. at 867.

IV. The Balancing of Equities Favors the Yurok Tribe Because the Tribe's Klamath River Fishery is Indisputably Imperiled.

The Rule 19 analysis requires that the court determine whether a required party can be joined to the action, and if not, whether "in equity and good conscience" the action should proceed "among existing parties." Rule 19(b). Compelling equitable factors lead to the conclusion that this dispute between Gary Dowd and the Yurok Tribe should proceed. The risks to the fishery of continued unregulated, unlawful fishing within the Yurok Reservation are significant. Resighini claims that it is

"nonsensical" that "one man" or "100 fisherman [sic]" could constitute a "substantial threat to the fishery." Answering Brief at 4, n. 1, and at 45 (arguing that the Rancheria's interest in its sovereign immunity "outweighs" any effort to prevent "one man" from fishing unlawfully on the Yurok Reservation).[5] As with other claims, the Rancheria offers no support for this remarkable assertion.

As this Court has acknowledged, the Klamath River fishery within the Yurok Reservation is "one of [the Yurok Tribe's] principal assets." *Parravano*, 70 F.3d at 546. The Tribe is obligated by its own culture, law and policy to protect and restore that fishery. The Tribe's Constitution obligates the Tribe to protect and take care of its fishery. ER 115 ("We pray for the health of all the animals, and prudently harvest and manage the great salmon runs and herds of deer and elk. We never waste and use every bit of the salmon, deer, elk, sturgeon, eels, seaweed, mussels, candlefish, otters, sea lions, seals, whales, and other ocean and river animals.").

The Klamath River fishery is also highly regulated by the United States, the Yurok Tribe, other Indian Tribes (not including Resighini), and the States of California and Oregon. ER 069. Whether fish are taken from the Yurok Reservation by "one man" or "100 fisherm[e]n," if those fish are taken without a State license or

[5] The Yurok Tribe notes that the lengthy footnote 1 in Appellees' Answering Brief relies on inadmissible hearsay and refers to matters not in the record on appeal. The Yurok Tribe addresses here only the argument portion of that footnote.

Yurok permit, they are fish "intended to migrate upstream and spawn." ER 071. If the fish are taken from a highly regulated fishery and without authorization, "the taking of these fish compromises the protection of the fishery resource for future generations." ER 071. The taking of single fish prevents that fish from spawning. The Yurok Tribe's obligation to protect this "asset" is not driven by mere economics; it is an obligation embedded in the Tribe's "cultural covenant" to protect the River. ER 122, Declaration of Thomas O'Rourke, ¶ 4.

In response to the smallest fall chinook salmon runs in history, the Yurok Tribe closed the commercial harvest and severely limited the subsistence and ceremonial harvest beyond that required in 2016 and 2017. ER 124. The Tribe's allocation in 2017 was 650 fish, "not enough for each tribal member to have even 1/10 of a salmon," and the Tribe, for the first time ever, closed the subsistence fishery that year. ER 124. The United States declared the 2016 season to be a "commercial fisheries disaster." ER 125. Faced with the "continued death of our fishery" (ER 125), the Yurok Tribe has no alternative but to pursue every avenue to prevent every unauthorized take of its fish, a limited and precious resource.

Resighini asserts that "one man" can do no harm. That rhetorical claim does not square with the facts. In equity and good conscience, the Yurok Tribe should be permitted to proceed with its action against Gary Dowd. Mr. Dowd sold whatever rights he had to the resources of the Yurok Reservation yet continues to take fish

from the Yurok Reservation without authorization or regulation. His unlawful actions only add to the "continued death" of the Yurok fishery.

V. Resighini's Reliance on an Unpublished Decision Interpreting Treaty Language Applicable Only to Washington Treaty Tribes Should be Ignored.

The principal legal authority on which Dowd and Resighini rely in arguing for dismissal is this Court's unpublished decision in *Skokomish Indian Tribe v. Forsman*, No. C16-5639 RBL, 2017 U.S. Dist. LEXIS 42730 (W.D. Wash. Mar. 23, 2017), *aff'd*, 2018 U.S. App. LEXIS 16351 (9th Cir. 2018). Answering Brief at 30-32 (citing *Skokomish* in support of argument that Resighini Rancheria is a required party under Rule 19(a)); at 43 (citing district court decision in *Skokomish* in support of argument that Resighini's sovereign immunity outweighs the Yurok Tribe's interest in a forum to resolve its dispute with Dowd as an individual). Although unpublished decisions of this Court may be cited in a party's briefs, such dispositions "are not precedent." Ninth Circuit Rule 36-3. Dowd nonetheless urges this Court to consider that case as "highly relevant" to the Rule 19 analysis, although he does not explain how a case can be relevant without also having some value as precedent. Answering Brief at 25, n. 7.

In any event, *Skokomish* cannot bear the precedential weight Dowd gives it. The critical distinguishing fact is that in *Skokomish* the absent Tribes' assertion of an interest in that hunting rights case was firmly based on a treaty that unequivocally

granted the absent Tribes a legally cognizable interest in an off-reservation resource to which Skokomish also claimed a right. That case presented a clear conflict among Tribes with colorable claims to the same resource—wild game—to be hunted outside their reservations under a treaty affirming that all the Tribes have equal rights to the resource. By contrast, here no treaty right is implicated, there is no shared natural resource to be allocated pursuant to a jointly signed treaty, and there is no legal basis whatsoever for a Resighini Rancheria assertion of an off-reservation right to fish on the Yurok Reservation. Unlike the well-defined interests of the absent Tribes in *Skokomish*, here the absent Rancheria's interest has no firm legal basis. In fact, that interest has been described in so many varying and conflicting ways without legal support as to be frivolous.[6]

[6] The other cases Dowd cites in support of an argument Resighini Rancheria is a required party under Rule 19(a) are inapposite. Answering Brief at 30. Two involve parties to contracts or leases, neither of which is present here. *McClendon v. United States*, 885 F. 2d 627 (9th Cir. 1989) (lease agreement); *Enterprise Mgt. Consultants, Inc. v. United States*, 883 F. 2d 890 (10th Cir. 1989) (contract). *Confederated Tribes of the Chehalis Indian Reservation v. Lujan*, 928 F. 2d 1496 (9th Cir. 1991) involved a dispute over governing authority on an Indian reservation, which likewise is not a factor in this case, because Resighini Rancheria's Constitution limits its sovereign authority to its Reservation boundaries. SER 8 (Article I-Territory states that the "jurisdiction of the tribe . . . shall extend over all territory included within the present rancheria and to such lands as may be legally added thereto.").

VI. The Practical Application of the Rule 19 Factors Supports the Conclusion That This Action May Proceed Without the Resighini Rancheria.

Joinder of required parties to an action should occur if "feasible." Rule 19(a). Where joinder is not feasible, subsection (b) of the Rule sets forth "nonexclusive" considerations to determine whether the action should proceed without the required party. *Republic of Philippines*, 553 U.S. at 862. "The general direction is whether 'in equity and good conscience, the action should proceed among existing parties or should be dismissed.'" *Id*. at 863. The analysis is "case specific" and relies upon "equitable considerations." *Id.* Some "preliminary assessment of the merits of certain claims" may be required. *Id*. at 868.

As to the first factor of Rule 19(b), the Yurok Tribe has demonstrated that Resighini will suffer no prejudice from a determination that Gary Dowd, an individual, sold whatever rights he may have had to fish within the Yurok Reservation. The Rancheria's sovereign rights are not implicated by Dowd's election to give up his rights. The decision in the dispute between the Yurok Tribe and Dowd will turn on specific facts: Dowd was thoroughly informed about the consequences of his decision, signed an affidavit affirming his understanding and his informed decision, accepted a check for $15,000, and waived any claimed interest and rights to the resources of the Yurok Reservation. ER 118-119. Under these circumstances, Resighini's interests are not implicated, and the District Court abused its discretion by ruling otherwise.

As to the second Rule 19(b) factor, there is no alternative to dismissal or other relief that would lessen any prejudice to the Rancheria; it will suffer no prejudice from a decision protecting the Yurok Tribal fishery from an unlawful fisher and it remains free to assert whatever tribal rights it claims.

The third factor of Rule 19(b), whether a judgment in the absence of the Rancheria would be adequate, seeks to resolve disputes "by wholes, whenever possible." *Provident Tradesmens Bank & Trust Co. v. Patterson*, 390 U.S. 102, 111 (1968). A judgment determining the validity of Dowd's waiver of his individual right to fish within the Yurok Reservation would resolve entirely the dispute between the Yurok Tribe and Gary Dowd. That such a judgment would not resolve a potential dispute between the Rancheria and the Yurok Tribe, or claims of other individuals seeking to fish without a license or permit on the Yurok Reservation, does not render the judgment incomplete. If others in the future seek to violate federal and Yurok law, the Yurok Tribe will bring an action against them. *Salt River Project Agric. Improvement & Power Dist. v. Lee*, 672 F.3d 1176, 1180 (9th Cir. 2012) (The possibility that other Navajo Nation officials not parties to the suit might act in the future in violation of federal law, would not prevent a decision on the merits of the dispute among parties to the action. The Nation would simply sue others as necessary in the future.).

The final, fourth factor of Rule 19(b) asks whether the Yurok Tribe would have an adequate remedy if the action were dismissed for nonjoinder of the Rancheria. It would not. Unregulated, unauthorized, unlawful fishing would continue within the Yurok Reservation. The Tribe's "primary asset" would be further imperiled: the fish taken unlawfully are those intended to escape the harvest and spawn upriver, thereby continuing the species' existence. If the District Court decision were upheld, the Rancheria could insulate its members from Yurok enforcement whenever Rancheria members came onto the Yurok Reservation and took resources from it. Rule 19 does not support such an absurd result.

CONCLUSION

The District Court's dismissal of the Yurok Tribe's claims against Dowd should be reversed because it abused its discretion by failing to examine the frivolous claims of the Resighini Rancheria that its members have a federal reserved fishing right on the Yurok Reservation, in direct contradiction to the Rancheria's Constitution that limits its authority and rights to its Reservation boundaries. The Rancheria has no legal basis on which to authorize its members to trespass on the Yurok Reservation and take fish from the Reservation.

The Yurok Tribe seeks to resolve its dispute with Gary Dowd, an individual who sold to the United States for $15,000, whatever rights or claims he may have had to the resources of the Yurok Tribe; yet he continues to enter the Yurok Reservation

and take fish from the River within that Reservation. In equity and good conscience, that dispute should be resolved. The District Court erred in dismissing the claims against Gary Dowd. The decision should be reversed, and the action remanded for further proceedings.

Respectfully submitted,

Date: September 14, 2018

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Form 8. Certificate of Compliance Pursuant to 9th Circuit Rules 28.1-1(f), 29-2(c)(2) and (3), 32-1, 32-2 or 32-4 for Case Number 18-15309

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Signature of Attorney or Unrepresented Litigant: /s/Scott W. Williams

Date: Sep 14, 2018

("s/" plus typed name is acceptable for electronically-filed documents)

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

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Date: September 14, 2018 BERKEY WILLIAMS LLP

By: */s/Scott W. Williams*
Scott W. Williams

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